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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,035	07/28/2003	Darryl C. Stein	G48-1386-1	9023
27123	7590	05/03/2007		
MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101			EXAMINER BLAKE, CAROLYN T	
			ART UNIT 3724	PAPER NUMBER
			MAIL DATE 05/03/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/631,035	<b>Applicant(s)</b> STEIN ET AL.	
	<b>Examiner</b> Carolyn T. Blake	<b>Art Unit</b> 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 7-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 27, 2007 has been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Specification***

3. The disclosure is objected to because of the following:
  - Paragraph 7, line 9: "excelerating" should be changed to - -accelerating- -.Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

4. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearl (3,815,221) in view of Henninger (3,274,409), Balamuth et al (3,086,288), and Kuris (3,610,080).

Pearl discloses an apparatus for cutting sheet type work (30) comprising a blade (18) defining at least one sharpened edge; a frame (12) having a support surface (16) mounted thereon for carrying at least one layer of a sheet-type work material (30); a carriage (22) coupled to said frame (12) for movement back-and-forth there along in a

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first coordinate direction in response to commands issued from a controller (26); a cutter head (20) coupled to said carriage (22) for movement back-and-forth in a second coordinate direction also in response to commands issued from said controller (26), said second coordinate direction being approximately perpendicular to said first coordinate direction.

Pearl fails to disclose the means for actuating the blade or a resonator assembly. However, Henninger discloses a resonator assembly including: a magnetically permeable beam (12); an element (20/21) coupled to said beam (12); a magnetic pickup (14) coupled to said beam (12); at least one discrete magnet (32) positioned proximate said pickup (14), said magnet (32) and said pickup (14) defining an air gap there between; resonating means for moving said at least one discrete magnet (32) relative to said pickup (14) to create an alternating magnetic field, thereby causing said pickup (14) to vibrate, which in turn cause said beam (12) and said element (20/21) to vibrate. Furthermore, Henninger discloses the resonating means includes: a magnet retainer (25) having a plurality of magnets (32) coupled thereto; a motor; said magnet retainer (25) being rotatably coupled to said motor (by shaft 7); and wherein rotation of said motor and thereby said magnet retainer (25) causes at least one magnet (32) to pass by said pickup (14) at a known frequency thereby generating an alternating magnetic flux that in turn causes said element (12) to resonate. Henninger discloses a mounting bracket (16/16), said beam (12) being attached to and cantilevered from said mounting bracket (16/17). The Henninger resonator assembly is fairly small in size and lightweight, while still being powerful and efficient (see. col. 1, lines 35-36 and lines 42-

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43). In addition, Balamuth et al disclose advantages for using a vibrating blade in cutting operations, particularly for cutting fabrics and leather. Balamuth et al disclose a vibrating blade requires less force (col. 1, lines 45-49) and creates a cleaner cut (col. 1, lines 53-56) than a blade that is not vibrating. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a small, lightweight, powerful, and efficient resonator assembly, as disclosed by Henninger, on the Pearl device for the purpose of vibrating the blade, which Balamuth et al disclose creates a clean cut with less force.

In addition, the modified device of Pearl fails to teach a controller as claimed. However, Kuris discloses an apparatus for cutting comprising a controller (15) for controlling the acceleration and deceleration of the blade (13) cutting the work material (a user's facial hair) and monitoring resonance of the blade and adjusting the frequency of the resonance to compensate for any damping caused by engagement of said blade into the work material. This tuning can be performing manually or automatically, and allows for adjustment of the vibrating blade depending on the force of the work piece on the blade. See col. 3, line 72 to col. 4, line 8. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a controller, as taught by Kuris, on the modified Pearl device for the purpose adjusting the blade vibration in response to work piece strength.

### ***Response to Arguments***

5. Applicant's arguments filed March 27, 2007 have been fully considered but they are not persuasive.

In response to Applicant's argument that the references cited cannot be combined to reject the claimed invention, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to Applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant argues repeatedly that the cited references teach away from the claimed invention. On the contrary, the examiner has considered each reference in its entirety and nothing in any of the references teaches away from the proposed combinations. It appears Applicant's only basis for this assertion is that one reference does not disclose every feature of the claims. The presence of a 103 rejection does not automatically mean the references teach away from the claimed invention. See MPEP 2145.

Regarding the Kuris reference, Applicant argues the Kuris blade is static and does not reciprocate as claimed. This is absolutely incorrect. The Kuris blade vibrates, just like Applicant's blade vibrates, and thus reciprocates to the same degree as Applicant's blade. In addition, Applicant contends, "the blade in Kuris merely uses flexural vibrations to reduce resistance and has nothing to do with the actual cutting" (*Remarks*, pages 12-13). This argument is not understood. The vibrations of the Kuris blade reduce resistance when cutting a work piece (a user's hair), and thus are directly related to the "actual cutting."

While the examiner agrees that differences exist between Applicant's invention and the prior art of record, these differences have not been claimed.

#### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn T. Blake whose telephone number is (571) 272-4503. The examiner can normally be reached on Monday to Thursday, 7:00 AM to 5:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

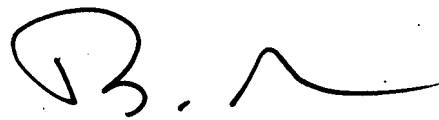
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CB

CB

April 25, 2007



BOYER D. ASHLEY  
SUPERVISORY PATENT EXAMINER